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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,853

05/13/2005

Leon Milner Theodore Dicks

9650-13

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08/01/2008

AKERMAN SENTERFITT

P.O. BOX 3188

WEST PALM BEACH, FL 33402-3188

EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

08/01/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,853	<b>Applicant(s)</b> DICKS, LEON MILNER THEODORE	
	<b>Examiner</b> C. SAYALA	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Prior Art***

Prior art cited in applicant's PCT file in the International Search Report have not been submitted under 27 CFR 1.56. Applicant is required to submit at least the following reference:

A. MAVROGENIS ET AL.: "The use of grape pulp, grape seed meal and barley straw in lamb fattening diets" CYPRUS AGRICULTURAL RESEARCH INSTITUTE TECHNICAL BULLETIN, no. 12, 1973, pages 1-8, since the Examiner has provided the remaining references.

Further, applicant must list these references on a form PTO-1449 for proper consideration and record. The Attorney's office was contacted prior to this application being examined, but did not result in either the references or an IDS being furnished to this Office.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garcia et al. (Journal of Animal Science, vol. 80, no. 1, 2002, pages 162-170) in view of Cavani et al. (Annales de Zootechnie, Elsevier, Paris, FR, vol. 37, no. 1, 1988, pages 1-12) and further in view of GB 452682 and Iritani et al. (US Patent 6077546).

Garcia et al. disclose a formulation that contains defatted grape seed meal and alfalfa hay. See Table 2. The reference does not teach the amount or pellets or Lucerne hay. The reference does not teach treating this with bacteria.

Cavani et al. teach a mixture of grape seed meal and dehydrated Lucerne meal, see Table 2. To substitute this in Garcia et al. for the alfalfa hay would have been obvious since the motivation is to provide crude fiber and Lucerne hay is well known as part of animal feeds. In fact, the Cavani reference indicates that the feed shown in Table 2 was provided in the form of pellets, which is a common expedient in the art in order to provide ease of shipping and handling. Also a 'meal' indicates that the Lucerne was subjected to grinding.

GB 452682 teaches soaking vegetable materials intended as animal feed such as dried grape skins in an aqueous sugar solution that also contains lactic acid producing microorganisms (see col. 1, page 1) and treating them as such to remove objectionable flavors (i.e. anti-nutritional factors, known in the art to be commonly contained in such food/feed articles). See col. 2, page 1 for the various bacteria shown. Iritani et al. also teach treating lignin or cellulose-containing plant materials with lactic acid bacteria which ferment the agricultural wastes to make them more digestible as animal feeds. See col. 1, lines 45+ and col. 6, line 45+. Such a technique is also taught as being beneficial in improving taste (col. 3, lines 53-55), assimilability and nutritional value since using such bacteria as *Streptococcus bovis* (col. 6, lines 54+) and various Lactobacilli, decompose phytin (col. 3, lines 8-10). Therefore, to treat the grape seed

meal and Lucerne meal with such techniques would have been prima facie obvious for the benefits shown by these references and discussed herein.

With regard to claim 11, none of the references discloses a diameter of about 1 mm. Although these claims are to a product and not to a process, and such a limitation is a process step, it is being held that while the reference teaches grape seed 'meal', it would have been an obvious expedient to provide as much surface area as possible to make contact with the bacteria treatment, and to grind it down to whatever size that achieves such a purpose would have been within the ambit of ordinary skill.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call  
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/C. SAYALA/**

**Primary Examiner, Art Unit 1794**